IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.3305 of 2005

Mr Ravindra I Sethna...Petitioner
vs
M/s Zaveri Mehta & Co and anr..respondents

Mr. D.B.Sawant for petitioner

CORAM: A.P.SHAH J.
Dated 25.l0.2005

P.C:

. The petitioner is the landlord and he has filed the present suit for eviction against respondent nos. l and 2 on various grounds under the Bombay Rent Act, which were all negatived by the trial court and the suit came to be dismissed. The appeal preferred by the petitioner also came to be dismissed.

. The only ground pressed before me is the ground of unlawful sub-letting as contemplated under section l3(l)(e) of the Bombay Rent Act. It is the case of the petitioner that respondent no.l which is a partnership firm was the tenant in respect of the suit premises. According to the petitioner the respondent no.l unlawfully sub-let the premises to the respondent no. 2. This ground was added during the pendency of the suit by amending the

plaint and inserting para 8 in the plaint. The respondents have denied the said ground in the additional written statement. It is the case of the respondents that the suit premises were originally let to the father of the respondent no. 2 in or about l939-40. He was the proprietor of the respondent no.l firm at that time. Subsequently the respondent no.2,his brother and sister in law and wife were joined as partners of the respondent no.l firm alongwith the father of respondent no. 2. After the death of the father other partners continued the firm. Thereafter by a deed of dissolution dated l7.8.l982 the firm was dissolved and respondent no. 2 became the sole proprietor of the respondent no.l firm.

. There is no dispute that the partnership firm was accepted as tenant and in fact it is the specific case of the petitioner that the firm had unlawfully sub-let the premises to the respondent no. 2. The respondent no.2 was one of the partners of the firm and upon dissolution of the firm he has continued the business as his proprietory concern. The short question is whether charge of unlawful subletting is established inthe facts of the case.

. In Dipak Banerjee vs Lilaboti Chakraborty, AIR l998 SC 2055 which was a case under West Bengal Premises Tenancy Act,l956, one of the issues before the Court was if the allegation of the landlord that the premises let out to tenant, part of which had been sublet by him, so as to entitle the landlord to evict the tenant under section l3(l)(a) of that Act. The court held that in order to prove sub-tenancy, two ingredients are necessary to be established;(l) the sub-tenant is in exclusive possession of part of the premises and the tenant retains no control over that part of the business, and (2) right to occupy the premises by the sub-tenant must be in view of payment of some compensation or rent. In that case, the Court held that both the ingredients were missing and held that there was no subletting.

. In Smt Krishnawati vs Hans Raj, (l974) l SCC 289 the two persons lived in a house as husband and wife. One of them had rented the premises and allowed the other to carry on business in a part of it. Again, the question was whether it amounted to subletting. The Court held that if two persons live together in a house as husband and wife and one of them who was the tenant of the house allows the other to carry on business in a part of it, it

will, in the absence of any other evidence,a rash inference to draw that the tenant has let out that part of the premises. It was held that it was a settled law that onus to prove subletting was on the landlord. If the landlord prima facie shows that the occupant who was in the exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. It was held that the landlord in that case produced no evidence to show subletting in spite of the denial by the tenant in the written statement of any subletting.

. In Shah Babubhai vs Prakash Ratansey Merchant, l986(l) All India Rent Control Journal, l44, a single Judge of this court has held that one of the partners constantly remained in partnership throughout while the others changed is not transfer or creation of illegal sub-tenancy prohibited by section l5 of the Bombay Rent Act.

. In the instant case the respondent no.l which was originally proprietary concern was converted into a partnership and this change was not objected to by the landlord and subsequently by a deed of dissolution dated l7.8.l982 the said partnership firm was also dissolved and respondent no. 2

became the sole proprietor of the firm and continued to carry on the business of the lst respondent. The respondent no. 2 was a partner in the partnership firm which was a firm consisting of the members of a family. After the father’s death other partners have left the firm and only one of them i.e. respondent no. 2 has continued the business. There is absolutely no material to show that any sub-lease was created in favour of the respondent no. 2. Under the circumstances, I do not see any reason to interfere with the finding of fact recorded by the courts below. Petition is dismissed.